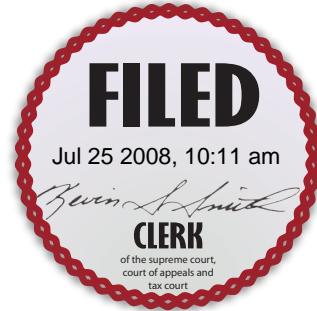


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF S.W., A.S. and R-N.S.,)
Minor Children, and CARMEN S., Mother,)

CARMEN S.,)

Appellant-Respondent,)

vs.)

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner,)

CHILD ADVOCATES, INC.,)

Co-Appelle-Guardian ad Litem.)

No. 49A04-0712-JV-705

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Larry Bradley, Magistrate
The Honorable Marilyn Moores, Judge
Cause No. 49D09-0706-JT-25355

July 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Carmen S. appeals the termination of her rights to her three children. Because the final order is valid and is supported by the evidence, we affirm.

FACTS AND PROCEDURAL HISTORY

In August of 2003, Carmen had two children: S.W. was born November 14, 2000, and A.S. was born June 30, 2002. Carmen and her children were living with Carmen's mother. However, Carmen's mother asked Carmen to leave her house. Because Carmen had become homeless and was a substance abuser, she called Child Protective Services for assistance. A CHINS petition was filed, Carmen admitted the allegations therein, and on September 25, 2003, the Court found S.W. and A.S. were CHINS.

Marion County Department of Child Services ("DCS") gave Carmen referrals for substance abuse treatment at four treatment centers, but she did not follow through with any of those referrals. In January of 2004, Carmen tested positive for marijuana. As of April 2004, she remained homeless. Carmen requires medication to treat her psychiatric conditions, which include anxiety, schizoaffective disorder, bipolar disorder, and ADHD; however, she has difficulty remaining compliant with her medications. Carmen signed specific consents for S.W. and A.S. to be adopted by their paternal grandmother.

Carmen gave birth to R.S. on September 11, 2005.¹ On June 14, 2006, after Carmen was arrested, DCS filed a petition alleging R.S. was also a CHINS. Carmen was incarcerated in October 2006, and on December 15, 2006, the court found R.S. was a CHINS. Carmen remained in prison until February 2007. During her time in prison, she was not given her psychiatric medications.

After she was released from prison, Carmen continued to have drug compliance and substance abuse problems. She missed at least ten urine screens for drugs between March and May of 2007. She admitted to her case manager that she was using cocaine, ecstasy, and marijuana. Her temper had become explosive and she was not keeping appointments with the home-based counselor.

DCS petitioned to terminate Carmen's parental rights to all three children.² After a hearing, the court terminated her rights in an order that provided, in pertinent part:

FINDINGS OF FACT

By clear and convincing evidence, the Court now finds:

* * * * *

5. Mother was ordered to complete services toward reunification. Services included completion of parenting, drug and alcohol assessments and drug and alcohol treatment. In addition, Mother was to remain in contact with the family case manager, secure an adequate legal source of income and maintain safe, suitable housing.
6. The first MCDACS referral for substance abuse treatment was made to Community Addiction Services of Indiana in November of 2003. The program was closed as unsuccessful due to Mother missing appointments. A second referral was made to Family Services in March of 2004 for an intensive outpatient program. This program was also closed as unsuccessful due to Mother's nonparticipation.

¹ CPS removed R.S. at birth because of Carmen's history with the other two children. A few days later, when CPS determined Carmen had stable housing with a friend and means to purchase the things R.S. needed, CPS returned R.S. to her.

² The paternal grandmother did not finalize her adoption of S.W. and A.S. When S.W. began to have behavior problems, the paternal grandmother asked CPS to remove the children from her care.

7. A third referral was made for a residential program through the Salvation Army's Harbor Light program. Mother went in for detoxification on April 15, 2004. She began her residential program but was discharged after testing positive for drugs upon returning from a pass to visit with her children.
8. Based on a psychiatric evaluation diagnosing Mother with mental health issues, a fourth referral was made to Galahue [sic] Mental Health on May 26, 2004 for a dual diagnosis program to address her mental health issues and substance abuse. Mother failed to participate in the referral. She did seek out treatment at the Hamilton Center.
9. Visitation between Mother and [S.W.] and [A.S.] was sporadic up to the point where visitation was suspended by the CHINS Court after Mother missed three consecutive visits.
10. Mother did not have a source of income or stable housing during this period of time.
11. As a result of Mother failing to participate in services, a termination of parental rights case was filed. In April of 2005, Mother executed specific consents for [S.W.] and [A.S.] to be adopted by their paternal grandmother. Based on the consents, the termination case was closed and no further services were offered in the CHINS matter.
12. [R.S.] was born on September 11, 2005. He was initially removed from Mother because of the pending CHINS cases on [S.W.] and [A.S.]. After it was determined that Mother resided in stable housing and had an income, [R.S.] was returned to Mother. During this time, Mother regularly participated in drug and alcohol treatment through Hamilton Center. She completed a twenty-four session program and attended after care. She was also compliant with mental health treatment, and took medications for her diagnosis of Schizoaffective Disorder, Bi-Polar Disorder and Anxiety.
13. A CHINS Petition was filed as [to R.S.] on June 14, 2006 under Cause Number 49D090606JV023498 after Mother was arrested and placed in jail for charges of Possession of Marijuana, Theft and Receiving Stolen Property, and Battery with Injury charges. [A.W.], the alleged father, was also unavailable to parent as his whereabouts were unknown.

* * * * *

17. [R.S.] was found to be in need of services as to Mother on December 15, 2006 and the child was formally removed from Mother on January 26, 2007.
18. Services were referred to address Mother's mental health issues and drug abuse. Mother completed the first part of a parenting

- assessment. The bonding assessment was never completed due to Mother's incarceration at the time. Mother was incarcerated between October of 2006 and February of 2007 after violating her parole by testing positive for cocaine during a urine screen.
19. Upon her release from prison, Mother was referred to Galahue [sic] Mental Health to participate in a dual diagnosis program to address her mental health and substance abuse issues. Mother did not follow through. Mother had disengaged in services with Hamilton Center after her release from prison. Since then, [s]he has seen her Hamilton Center therapist, Amy Teverbaugh, one time on September 10, 2007 but has no current relationship with her even though Ms[.] Teverbaugh has "begged" Mother to return to services.
 20. A urine screen referral to test for illegal substances was referred for Mother to Mosaic. The referral was closed out for non-participation and at least one positive sample.
 21. Mother has a history of Marijuana Dependence [sic] and alcohol and Cocaine abuse. She has only completed one treatment program at Hamilton Center, after which she relapsed. Five unsuccessful referrals were made by MCDCS. It appears that Mother is incapable of remaining drug and alcohol free, provide [sic] a safe environment for her children and appropriately parent. [sic]
 22. Mother has a history of mental illness for which she is not seeking adequate treatment or taking medication. Mother became stable through Hamilton Center and provided appropriate housing. After not receiving medications in prison, Mother decompensated. When not receiving treatment and medication, Mother is overwhelmed by life; too overwhelmed to maintain safe housing and appropriately parent.
 23. Given Mother's past history of failing to remain clean and sober, her lack of stable housing, and unaddressed mental health issues, there is a reasonable probability that the conditions resulting in the children's removal and continued placement outside the home will not be remedied. Other than one session at Hamilton Center in September of 2007, services are not being pursued. Mother is either unable or unwilling to move forward to assume parental duties.
 24. [S.W.] and [A.S.] were placed with their paternal grandmother for a substantial time. Mother had signed specific consents for the paternal grandmother to adopt the two children. This placement fell through and the adoption consents, being specific, became moot. The children are placed in therapeutic foster care. [S.W.] is receiving counseling for issues relating to permanency issues. The foster parents have experience with special needs children and are planning to adopt both children. [S.W.] and [A.S.] are happy in their

- placement.
25. [R.S.] is residing with his paternal great-aunt. The relationship is a loving one with appropriate interaction and discipline. Paternal great-aunt is willing to adopt [R.S.] but her spouse may be a barrier. There is at least one other foster family willing to adopt him if his current placement falls through.
 26. The two oldest children have been out of Mother's home for a substantial amount of time. [S.W.] has developed problems because of this. [R.S.] has spent the majority of his life in his current placement. It would be in the children's best interest to move forward with termination and adoption to provide them with a sense of stability and permanency.
 27. Amanda Bishop is the children's Guardian ad Litem. Taking in consideration Mother's lack of progress with services and the children's need for permanency, Ms. Bishop feels that MCDCS's plan of termination and adoption is in the children's best interests.

CONCLUSIONS OF LAW

1. [S.W.] and [A.S.] have been removed from Carmen [S.] for at least six (6) months pursuant to a CHINS Disposition Order.
2. [R.S.] has been removed from [sic] Carmen [S.] and [A.W.] for at least six (6) months pursuant to a CHINS Disposition Order.
3. There is a reasonable probability that the conditions that resulted in the children's removal and continued placement outside the home will not be remedied by either parent.
4. The continuation of the parent-child relationship poses a threat to the well-being of the children.
5. Termination of the parent-child relationship is in the best interests of the children.
6. There is a satisfactory plan for the care and treatment of the children, that being adoption.

(Appellant's App. at 10-14) (emphases in original).

DISCUSSION AND DECISION

1. Validity of Order

Carmen's first complaint is that the final order signed by Judge Moores did not have Magistrate Bradley's signature. Because Magistrate Bradley heard the evidence, Carmen asserts Judge Moores, who did not hear any evidence, "had no grounds to order

termination.” (Appellant’s Br. at 7.) In its Appendix, the State provided an order identical to the final order that contained Magistrate Bradley’s signature, but not Judge Moores’ signature. (See Appellee’s App. at 2-6.) Accordingly, Magistrate Bradley reported findings to Judge Moores. Because the facts do not support Carmen’s argument, we need not interpret the legislature’s directive that magistrates “report findings” to the court, which enters the final order. *See* Ind. Code § 33-23-5-9.

2. Sufficiency of Evidence

We have long had a highly deferential standard when reviewing terminations of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied* 822 N.E.2d 970 (Ind. 2004). Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* In deference to the juvenile court’s unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied* 735 N.E.2d 226 (Ind. 2000), *cert. denied* 534 U.S. 1161 (2002). A judgment is clearly erroneous only if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

“The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, the juvenile court must

subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

To terminate a parent-child relationship, the State is required to allege and prove:

- (A) [o]ne (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
* * * * *
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and,
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish one or more of these allegations by clear and convincing evidence. *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992). Carmen challenges the court's findings under elements (B) and (C).³

A. Reasonable Probability

When determining whether there is a reasonable probability the conditions justifying a child's removal and continued placement outside the home will not be

³ Because Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, a trial court needs find by clear and convincing evidence only one of the two requirements of element (B): the conditions resulting in the child's removal and continued placement outside the home will not be remedied, or continuation of the parent-child relationship poses a threat to the child's well-being. *See L.S.*, 717 N.E.2d at 209. Accordingly, if we can affirm the court's finding under one of those requirements, we need not review the evidence supporting the other.

remedied, the juvenile court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied* 753 N.E.2d 12 (Ind. 2001). However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.*

Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied* 774 N.E.2d 515 (Ind. 2002). The court may also properly consider the services offered to a parent, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* A department of child services is not obliged to rule out all possibilities of change; it need establish only a reasonable probability a parent's behavior will not change. *See In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). "[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied* 869 N.E.2d 456 (Ind. 2007).

Carmen's mental health therapist has no record Carmen met with the doctor who prescribed her psychiatric medications after July of 2007. The therapist unsuccessfully

attempted to get the prison to give Carmen her medications while she was incarcerated, and she could not get Carmen to reengage in services after her release from prison. The therapist worked with the prison release program to try to find Carmen a place to live, but was unable to do so because Carmen's federal assistance was terminated while she was incarcerated.

After Carmen was released from prison in February 2007, a DCS caseworker referred her to Gallahue for substance abuse and mental health treatment at the State's expense, but Carmen did not follow through. The home-based therapist had three meetings with Carmen, but then Carmen stopped being home for the meetings or returning the therapist's calls. The court terminated Carmen's supervised visits because of Carmen's positive drug screens and non-compliance with the treatment plan. After the court terminated her visitation, Carmen was out of contact with the caseworker until the day before the termination hearing, though the caseworker left phone messages and sent letters.

At the time of the termination hearing, Carmen's untreated mental health issues and her substance abuse continued to be problems for which Carmen seemed unwilling to receive assistance. In light of the evidence, we cannot find the court erred in determining there was a reasonable probability Carmen would not remedy the circumstances that led to the children's removal.

B. Best Interest

In determining what is in the best interest of the child, the trial court must look beyond the factors identified by the Department of Child Services to the totality of the

evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the court must subordinate the interests of the parent to those of the children. *Id.* The recommendations of a caseworker and guardian ad litem (“GAL”) that parental rights be terminated support a finding that termination is in the child’s best interest. *Id.*

DCS changed the permanency plan for Carmen’s children from reunification to adoption because:

Carmen had, had showed very little effort in maintaining sobriety. She also had not tried to stay in contact with the Department, to even check on the status of her children. Which was a big concern of mine. It’s been, you know, a prior CHINS that has gone on for quite a while. Was part of that decision as well.

(Tr. at 150) (errors in original). As for the children’s need for permanency, the caseworker testified:

[S.W.] and [A.S.] especially have been from one home [to another]. Aunt’s home to grandmother’s home, to foster care. They’re, they’re not for sure whether they’re coming or going. Where mom is. Where dad is. They... [S.W.] is starting to show a lot of that confusion and in her behavior and that started I believe with the end towards grandmother. She is receiving therapeutic services through Adult & Child, such as counseling to deal with. “Where is mommy?” “Where is daddy?” “Where am I gonna stay?” “Who am I gonna live with?” And I think there’s been quite a bit of, of accomplishment made in trying to give [S.W.] some feeling of permanency.

(*Id.* at 154) (errors in original).

The caseworker testified giving Carmen additional time would not be in the children’s best interests because the children fear that they may be moved again and the children need to have a place to call home. The guardian ad litem believes giving

Carmen additional time is not in the children's best interests because "the children have been moved around so much that they just need someone that's stable and that they know that they're gonna wake up every day and have a certain plan." (*Id.* at 194.)

In light of that testimony, we find no error in the court's determination that termination was in the children's best interests. Accordingly, we affirm the termination of Carmen's parental rights to her three children.

Affirmed.

MATHIAS, J., and VAIDIK, J., concur.